

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONALD CARNEY, Action No. 1
Plaintiff,
- v - 9:08-CV-1251

MICHAEL F. HOGAN, Commissioner, NYS
Office of Mental Health; and DONALD SAWYER, LEAD CASE
Executive Director, CNYPC,
Defendants.

DONALD CARNEY, Action No. 2
Plaintiff,
- v - 9:08-CV-1280

MICHAEL F. HOGAN; TERRI MAXY MILLIAN;
VALERIE COLASANTE; and DONALD SAWYER, MEMBER CASE
Defendants.

APPEARANCES: OF COUNSEL:

DONALD CARNEY
Plaintiff, Pro Se
CNY Psychiatric Center
9005 Old River Road
PO Box 300
Marcy, New York 13403

HON. ANDREW M. CUOMO
Office of Attorney General
State of New York
Department of Law
The Capitol
Albany, New York 12224

DAVID N. HURD
United States District Judge

AARON M. BALDWIN, ESQ.
Assistant Attorney General

DECISION and ORDER

Plaintiff, Donald Carney, brought these civil rights actions in November 2008, pursuant to 42 U.S.C. § 1983. The cases were consolidated in December 2008. By Report-Recommendation dated March 30, 2010, the Honorable Andrew T. Baxter, United States Magistrate Judge, recommended that defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. No. 15) be granted in part and denied in part as follows: all of plaintiff's claims with the exception of his First Amendment cause of action seeking injunctive relief against the defendants in their official capacity be dismissed.

The defendants have filed objections to the Report-Recommendation.

Based upon a de novo review of the Report-Recommendation and the entire file, including those portions to which the defendants have objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

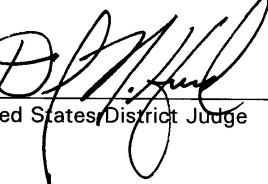
Accordingly, it is

ORDERED that defendants' motion to dismiss is GRANTED in part and DENIED in part as follows:

- (a) All of plaintiff's claims with the exception of his First Amendment cause of action in the Lead Case (08-cv-1251) seeking injunctive relief against the defendants in their official capacity are DISMISSED;
- (b) The Member Case (9:09-CV-1280) is DISMISSED;
- (c) The Clerk shall enter judgment dismissing the Member Case (08-cv-1280); and
- (d) The Lead Case (08-CV-1251) shall be returned to the Magistrate Judge for handling of further proceedings in the plaintiff's First Amendment cause of action seeking injunctive relief against defendants Michael F. Hogan and Donald Sawyer in their official

capacities.

IT IS SO ORDERED.



United States District Judge

Dated: June 15, 2010
Utica, New York.